

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202

April 16, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

IN RE: PETITION FOR EXEMPTION OF CERTAIN SERVICES, Docket 03-00391

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Responses to BellSouth Telecommunications, Inc.'s First Set of Interrogatories and Requests for Production of Documents in regard to Docket No. 03-00391. Please file same in this docket. Copies are being sent to all parties of record.

Should you have any questions, please contact me at (615) 741-1671. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Joe Shirley".

Joe Shirley
Assistant Attorney General

CC: All Parties of Record.

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**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION FOR EXEMPTION OF)	
CERTAIN SERVICES)	DOCKET NO. 03-00391
)	
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**CONSUMER ADVOCATE AND PROTECTION DIVISION'S
RESPONSES TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), and hereby submits the following responses to the first set of discovery requests propounded by BellSouth Telecommunications, Inc. ("BellSouth"):

1. Please identify each fact witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the witness will testify;**
- b) the basis of the witness' personal knowledge of the matter regarding which witness will testify; and**
- c) all facts of which the witness is aware that support the witness' testimony.**

Response: The Consumer Advocate objects to this interrogatory on the ground that it is not required to provide a witness list with summaries. *See Strickland v Strickland*, 618 S.W.2d 496, 499 (Tenn. Ct. App. 1981). Without waiving its objection, the Consumer Advocate responds as follows:

Through investigation and discovery, the Consumer Advocate is in the midst of its review and analysis of this docket. The Consumer Advocate has not identified any persons who may have discoverable factual information. In accordance with Tenn. R. Civ. P. 26.02(1), the Consumer Advocate will supplement this response to identify persons who may have discoverable factual information but will not provide a witness list with summaries.

2. Please identify each expert witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the expert will testify;**
- b) the basis for your assertion that the witness is qualified as an expert including, but not limited to, a current curriculum vitae;**
- c) all tests, studies, measurements, experiments, or other analysis or actions performed or observed by the expert relating to the expert's testimony;**
- d) all opinions that the expert will present in this docket and the basis for each opinion; and**
- e) all facts of which you or the expert are aware that support those opinions.**

Response: Through investigation and discovery, the Consumer Advocate is in the midst of its review and analysis of this docket. Accordingly, the Consumer Advocate has not identified the expert witness(es) that it may present in this docket or determined the subject(s) or opinion(s) upon which such witness(es) may testify. The Consumer Advocate will supplement this response when such determinations are made.

3. Please state any and all bases upon which you will contend in this docket that intraLATA toll service is not open to competition and all facts which you believe support that

contention.

Response: The Consumer Advocate objects to this interrogatory on the ground that it is vague, ambiguous, overly broad, imprecise, or uses terms that are subject to multiple interpretations. In particular, the term “open to competition” is not properly defined or explained for purposes of this interrogatory. Without waiving its objection, the Consumer Advocate responds as follows: If by “open to competition” BellSouth means that there is some level of competition in the intraLATA toll service market, then the Consumer Advocate will not contend that intraLATA toll service is not open to competition. Moreover, the Consumer Advocate considers the question of whether the intraLATA toll service market is “open to competition” as only an ancillary issue in this docket. The Consumer Advocate will focus its review and analysis on whether the public interest and telecommunications policies are served by exempting intraLATA toll service from certain regulatory requirements and whether existing and potential competition is an effective regulator of the price of intraLATA toll service. *See* Tenn. Code Ann. § 65-5-208(b) (Supp. 2003).

4. Please state whether you agree that competition for intraLATA toll services in Tennessee is an effective regulator of price for intraLATA toll service, and if you do not agree, please state why you do not agree and all facts that you believe support your position.

Response: The Consumer Advocate has not completed its discovery and investigation into the issue of whether competition is an effective regulator of price for intraLATA toll service. The Consumer Advocate will supplement this response once it concludes its review and analysis.

5. Please state whether you believe the market in Tennessee for intraLATA toll service is either more or less competitive than the market in Tennessee for interLATA service and, if you believe that the markets for these services is not comparably competitive, please

explain why and state all facts upon which your position is based.

Response: The Consumer Advocate has not completed its discovery and investigation into the status of competition in the intraLATA toll service market in Tennessee. The Consumer Advocate will supplement this response once it concludes its review and analysis.

6. Please identify all the modes existing in Tennessee, of which you are aware, by which end-users may place an intraLATA toll call (for example, wireline, wireless, voiceover internet protocol, etc.)

Response: The Consumer Advocate is aware of the following technically-feasible modes for placing an intraLATA toll call: (1) wireline; (2) wireless; and (3) voiceover internet protocol.

7. Please identify any technical mode of placing an intraLATA call, which you believe is available in the United States but which is not available in Tennessee. For each mode that you identify, please identify all entities of which you are aware who offer such mode and where it is offered.

Response: The Consumer Advocate is not aware of any technical mode of placing an intraLATA call which is available in the United States but which is not available in Tennessee.

8. Please identify all ways in which you believe exempting toll service from tariff requirements would cause harm to any end-user in Tennessee and for each way identified, please explain:

- a) the basis for your belief;**
- b) any example of such harm being caused anywhere else in the United States;**
- c) how likely you believe that harm would be to occur.**

Response: Telecommunications tariffs are important because they embody the prices, terms

and conditions of wholesale and retail services and products and, accordingly, are central to effectuating the statutes, regulations and policies applicable to the tariffed subject matter. In particular, the complete removal of tariffing requirements for intraLATA toll service would frustrate the achievement of the following law and policy:

1. Resale of intraLATA toll service at wholesale discounts off the retail tariffed rate. Federal law requires incumbent carriers such as BellSouth and Citizens Telecommunications Company of Tennessee, LLC (“Citizens”) to offer intraLATA toll service to competitors at wholesale rates established by the TRA. *See* 47 U.S.C.A. §§ 251(c)(4) and 252(d)(3). In establishing its resale rules, the Federal Communications Commission recognized that the incumbent carrier’s underlying retail tariffs constitute a key component of the federal resale system. *See Local Competition Order* at ¶¶ 872, 939, 953. Additionally, in establishing the wholesale rate for the retail service offerings of BellSouth and United Telephone-Southeast, Inc. (“United”), including intraLATA toll service, the TRA ordered that “the wholesale discount be, and hereby is, established as a set percentage off the tariffed rates”. *Avoidable Costs Order* at p. 7 (*footnote omitted*).

2. Prohibition against anti-competitive conduct. In an effort to open telecommunications markets to competition, both Congress and the General Assembly have passed legislation declaring pro-competitive policies. Federal Telecommunications Act of 1996; Tennessee Telecommunication Reform Act of 1995. Laws that advance and sustain viable competition in telecommunications markets, including the intraLATA toll service market, are central components of these legislative initiatives. *See* 47 U.S.C.A. §§ 251, 252, 253, 271, and 272; Tenn. Code Ann. § 65-5-208(c) & (d). Tariffs define the relationship between the company and its customers, which is a key concern in dealing with anti-competitive issues. Accordingly, tariffs are an integral part of any anti-competitive

claim and of an agency or court's oversight of potential anti-competitive conduct or practices.

3. Prohibition against the application of unjustly discriminatory rates. Both federal and state law prohibit the application of unjustly discriminatory rates and terms among similarly situated customers. *See* 47 U.S.C.A. §§ 201 and 202; Tenn. Code Ann. §§ 65-4-115, 65-4-122 and 65-5-204(a). Because tariffs set out the generally applicable rates and terms of service, they are essential to the fulfillment of the policy objectives expressed in these statutes. Currently, the provisioning of intraLATA toll service is strictly governed by the state statutes.

In addition, tariffs provide published information that consumers find valuable. With respect to long-distances services, tariffs describe available calling plans and applicable fees and charges, such as monthly flat fees, per-minute rates for relevant time periods, calling card rates and surcharges, 800 service charges, etc. By consulting the tariffs themselves or information sources that utilize tariff data to summarize competing calling plans, consumers are better able to select the plan that best fits their individual calling patterns and needs. Moreover, the current tariffing process helps assure that objective, transparent information is provided regarding long-distance services. Tariffing requirements allow consumers, regulators and the company to reach a clearer understanding of the service being provided and the consideration exchanged. Accordingly, preservation of an open tariff process facilitates the speedy and satisfactory resolution of consumer complaints. Elimination of tariffing requirements therefore would remove beneficial consumer information from the public domain.

All of the laws and policies discussed above regarding resale, competition, discrimination and published information are designed to benefit and protect the interests of consumers. Tariffing requirements assure that these pro-consumer initiatives remain in place, and only after such

requirements are abrogated will actual harm accrue.

9. Please identify and describe with specificity any way in which you believe that the market in Tennessee for intraLATA toll service is different than the market in Tennessee for interLATA toll service.

Response: Unlike interLATA toll, compensation for intraLATA toll traffic in Tennessee is determined by an intraLATA toll settlement arrangement set forth in a primary carrier plan (PCP) agreement between BellSouth and rural independent telephone companies and cooperatives. It is recognized that the revenue stream generated by this intraLATA toll settlement arrangement has contributed significantly to the independent telephone companies' overall cost recovery for regulated services and to the affordability of rates for essential telephone services provisioned by the independent companies. *See Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer*, TRA Docket No. 00-00523 (May 9, 2001); *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 & 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000*, TRA Docket No. 00-00523 (June 28, 2002). The Consumer Advocate is aware that BellSouth and the independent telephone companies and cooperatives have had continuing discussions and negotiations concerning possible alterations to the current intraLATA toll settlement arrangement and compensation rates. *See* TRA Docket No. 00-00523. The Consumer Advocate is currently evaluating the relationship between the issues raised in TRA Docket No. 00-00523 and the instant docket. In particular, the Consumer Advocate is interested in determining whether and, if so, how the exemption of intraLATA toll service from certain regulatory requirements would affect the following: the outcome of Docket No. 00-00523; the intraLATA toll settlement arrangement; the independent companies' recovery of

regulated costs; and the affordability of essential telephone services provided by the independent companies

10. Please identify and describe with specificity any way in which you believe that the market in Tennessee for intraLATA toll service is different than the market in other states for interLATA toll service.

Response: The Consumer Advocate objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this docket. In particular, differences between the intraLATA toll service market in Tennessee and the interLATA toll service market in other states have no bearing on whether intraLATA toll service should be exempted from certain regulatory requirements pursuant to Tenn. Code Ann. § 65-5-208(b) (Supp. 2003). Without waiving its objection, the Consumer Advocate responds as follows: The Consumer Advocate is not aware of any way in which the market in Tennessee for intraLATA toll service is different than the market in other states for interLATA toll service.

11. Please state the number of end-user complaints regarding pricing of intraLATA toll service in Tennessee that you have received, and for each such complaint identify the name of the complaining end-user, the approximate date of the complaint, and the nature of the complaint.

Response: The Consumer Advocate is not a complaint-clearing agency, nor does it represent individual consumers before any court, agency or judicial tribunal. Accordingly, the Consumer Advocate generally does not take individual consumer complaints. In instances where individual consumers contact the Consumer Advocate directly regarding complaints involving Tennessee utility

matters, the Consumer Advocate generally refers the consumer to the following agencies:

Tennessee Division of Consumer Affairs
500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 741-4737

and/or

Tennessee Regulatory Authority
Consumer Services Division
460 James Robertson Parkway
Nashville, Tennessee 37243
(615) 741-2904

The Consumer Advocate is not aware of any communications or documents in its possession referring or relating to end-user complaints regarding pricing of intraLATA toll service in Tennessee, nor does the Consumer Advocate maintain records regarding the nature of referrals of individual consumer matters to other agencies.

12. Please state whether you agree with the following statements, and for each statement which you do not agree please explain why and identify all facts of which you are aware that you believe support your position:

a) The intraLATA toll market has progressed to the point that it can be considered open to competition, exemplifying a successful regulatory effort;

Response: The Consumer Advocate objects to this interrogatory/request for admission on the ground that it is vague, ambiguous, overly broad, imprecise, or uses terms that are subject to multiple interpretations. In particular, the term “open to competition” is not properly defined or explained for purposes of this interrogatory/request for admission. Without waiving its objection, the Consumer Advocate responds as

follows: If by “open to competition” BellSouth means that there is some level of competition in the intraLATA toll service market, then the Consumer Advocate agrees that the intraLATA toll market can be considered open to competition.

b) Today, large numbers of customers can — and do — switch from one toll carrier to another at minimal expense with no interruption of service.


Response: The Consumer Advocate objects to this interrogatory/request for admission on the ground that it is vague, ambiguous, overly broad, imprecise, or uses terms that are subject to multiple interpretations. In particular, the terms “large numbers” and “minimal expense” are not properly defined or explained for purposes of this interrogatory/request for admission.

13. Please identify and produce all documents to which you have referred or on which you have relied to answer the foregoing interrogatories.

Response: All documents relied upon are referenced herein and are a matter of public record.

RESPECTFULLY SUBMITTED,

PAUL G SUMMERS, B.P.R. #6285
Attorney General
State of Tennessee



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Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-2590

Dated: April 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via facsimile or first-class U.S. Mail, postage prepaid, on April 20, 2004, upon:

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